

JAN 19 2007

#43

PTO/SB/65 (10-05)

Approved for use through 04/30/2009 OMB 0651-0016

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)
WLI 1004 R

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

RECEIVED

FEB 01 2007

NOTE: If information or assistance is needed in completing this form, please contact the Patent Office at (571) 272-3282.

OFFICE OF PETITIONS
01/31/2007 DALLEN 00000013 500476
01 FC:1552 2300.00 CR
02 FC:1557 700.00 CR

RE38216

Patent No. RE 38,216 Application Number 09/174,804
Issue Date 8/12/2003 Filing Date 10/19/1998

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above-identified patent:

- ☒ is a reissue of original Patent No. 5,568,925 original issue date 10/29/1996;
original application number 08/516,791;
original filing date 08/18/1995.
- ☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application filed on _____.

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is
(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR
(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

01/31/2007 DALLEN

00000013 500476 RE38216
Date

01 FC:1552
02 FC:1557

2300.00 DA
700.00 DA

Karen A. Hopf
Signature

Karen A. Hopf

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

JAN 19 2007

PTO/SB/65 (10-05)

Approved for use through 04/30/2009. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g).

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 1/2 yr fee	(1551)	<input type="checkbox"/> \$ _____	3 1/2 yr fee	(2551)
<input checked="" type="checkbox"/> \$ 2,300.00	7 1/2 yr fee	(1552)	<input type="checkbox"/> \$ _____	7 1/2 yr fee	(2552)
<input type="checkbox"/> \$ _____	11 1/2 yr fee	(1553)	<input type="checkbox"/> \$ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(l)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700.00

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☒ Please charge Deposit Account No. 50-0476 the sum of \$ 3,500.00. A duplicate copy of this authorization is attached.
- ☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☒ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 50-0476. A duplicate copy of this authorization is attached.

RECEIVED
CENTRAL FAX CENTER

JAN 19 2007

PTO/SB/65 (10-05)

Approved for use through 04/30/2009. OMB 0651-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made please

☒ Credit to Deposit Account No. 50-0476

OR

☐ Send refund check.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

John S. Artz
Signature(s) of Petitioner(s)
John S. Artz
Typed or printed name(s)
28333 Telegraph Road, Suite 250
Address
Southfield, MI 48034
Address

01/19/2007

Date

36,431

Registration Number, if applicable

(248) 223-9500

Telephone Number

ENCLOSURES:

- ☒ Maintenance Fee payment
☒ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
☒ Other: Petition to Accept Unavoidably Delayed Payment of
Maintenance Fee In An Expired Patent Fee - \$500.00

PTO/SB/65 (10-06)

Approved for use through 04/30/2009, OMB 0851-0016

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."



Signature

01/19/2007

Date

John S. Artz

Typed or printed name

36,431

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

Please see attached "Statement Under Paragraph 8" and supporting Declarations.

(Please attach additional sheets if additional space is needed)

(Page 4 of 4)

JAN 19 2007

PTO/SB/45 (12-04)

Approved for use through 04/30/2009. OMB 0851-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

MAINTENANCE FEE TRANSMITTAL FORM

Address to:
U.S. Patent and Trademark Office
P.O. Box 371611
Pittsburgh, PA 15250-1611

I hereby certify that this correspondence is being deposited with the United States Patent Office via facsimile addressed to:

Mail Stop Petition on January 19, 2007.

Facsimile No. (571) 273-8300

Signature

Karen A. Hopf

Typed or printed name Karen A. Hopf

FEB 01 2007

OFFICE OF PETITIONS

Enclosed herewith is the payment of the maintenance fee(s) for the listed patent(s).

- ☐ A check for the amount of \$ _____ for the full payment of the maintenance fee(s) and any necessary surcharge on the following patents is enclosed.
- ☒ The Director is hereby authorized to charge \$ 3,000.00 to cover the payment of the fee(s) indicated below to Deposit Account No. 50-0476. A duplicative copy of this form is enclosed.
- ☒ The Director is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account No. 50-0476. A duplicative copy of this form is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.

* Information required by 37 CFR 1.366(c) (columns 1 & 4). Information requested under 37 CFR 1.366(d) (columns 2, 3, & 5)

Item	Patent Number	Maintenance Fee Amount (37 CFR 1.20 (e)-(g))	Surcharge Amount (37 CFR 1.20(h))	U.S. Application Number* [e.g., 08/555,555]	Payment Year		
					Column 5		
	Column 1	Column 2	Column 3	Column 4	3.5 yrs	7.5 yrs	11.5 yrs
1	RE 38,216	2,300.00	700.00	09/174,804		X	
2							
3							
4							
5							
Subtotals: Columns 2 & 3		2,300.00	700.00	<input type="checkbox"/> additional sheets attached for listing additional patents.			
Total Payment		3,000.00					

☐ additional sheets attached for listing additional patents.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on Form PTO-2038.

Respectfully submitted, **

Customer's Signature:

John S. Artz

Customer's Name: John S. Artz

Registration Number, if applicable: 36,431

Telephone: (248) 223-9500

Fax: (248) 223-9522

Note: All correspondence will be forwarded to the "Fee Address" or to the "Correspondence Address" if no "Fee Address" has been provided. See 37 CFR 1.363.

Payment of small entity fee is appropriate if small entity status still exists, see 37 CFR 1.27(g). To establish small entity status or to change status from small to large entity, a written assertion is required. See 37 CFR 1.27 and 1.33(b).

** WHERE MAINTENANCE FEE PAYMENTS ARE TO BE MADE BY AUTHORIZATION TO CHARGE A DEPOSIT ACCOUNT, BOTH THE NAME AND SIGNATURE OF AN AUTHORIZED USER ARE REQUIRED.

This collection of information is required by 37 CFR 1.368. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA, 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, PA 15250-1611.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

RECEIVED

FEB 01 2007

Statement Under Paragraph 8
OFFICE OF PETITIONSRECEIVED
CENTRAL FAX CENTER

JAN 19 2007

Brief Summary:

Despite (1) reliance on an industry-recognized docketing system; (2) a well-established and reliable procedure for processing docketing action items; and (3) assurances from a competent and reliable patent assistant who had paid ten previous maintenance fee payments, the second maintenance fee for the '216 reissue patent (which succeeded the '925 patent) was not paid. The Artz firm exercised the care and diligence generally used and observed by prudent and careful men in relation to their most important business and relied on worthy and reliable employees. A finding of unavoidable delay is necessary in order to avoid an inequitable loss of patent rights.

The detailed facts as set forth below are supported by Declarations of persons personally acquainted with them. Briefly, the Artz & Artz law firm was responsible for paying the second maintenance fees on U.S. Patent No. 5,568,925 ("the '925 patent") reissued as RE 38,216 (the '216 reissue patent). From its inception, the Artz law firm has used the well-known CPI computer docketing system and the '925 patent was properly docketed in the system. The Artz law firm also had capable, trained employees that were responsible for overseeing the docket. The employees followed established procedures for ensuring that items were properly entered in the docketing system, and that docket reports were run on a regular basis and distributed to both the responsible attorneys and their legal assistants. The employees also ensured that action items and due dates on the docket reports were met.

In this case, the responsibility for paying the second maintenance fee for the '216 reissue patent was, ultimately, that of Mr. John S. Artz, the principal attorney for the '925 patent, which was succeeded by its '216 reissue patent. The due date for the second '216 maintenance fee

payment appeared on docket reports provided to Mr. John S. Artz and his then secretary, Ms. Latitia Ford. Ms. Ford had worked at the Artz firm since 2000 and was a competent and reliable employee. During the applicable period of time in 2004, as was their customary practice, Mr. Artz and Ms. Ford reviewed the docket reports individually, as well as together.

When the due date for the second maintenance fee of the '216 patent appeared on the docket of Mr. Artz, he instructed Ms. Ford to pay it as was their customary practice. During a subsequent meeting, upon questioning from Mr. Artz, Ms. Ford assured him that she had paid the second maintenance fee for the '216 patent. Mr. Artz specifically recalls this since the '925 and the '216 reissue patent were two of his client's more significant patents. At this point, Mr. Artz took this action item off his docket relying on the representation that it had been paid, in keeping with their normal and customary practices. Recent investigation shows that Ms. Ford has paid ten maintenance fees at the Artz firm during the 2002-2004 time period in accordance with this practice. The only maintenance fee not paid was the last one, namely the second maintenance fee for the '216 patent.

Despite Ms. Ford's assurance that the '216 patent maintenance fee was paid, it was not. Mr. Artz, however, had no reason to doubt the veracity of Ms. Ford's statement. Ms. Ford was a reliable and trustworthy person, and nothing in their working relationship raised any doubt or question in Mr. Artz's mind that the maintenance fee had not been paid. Based on several years of past experience, Ms. Ford had always done what she said, and Mr. Artz trusted her. No other dates were missed by Ms. Ford and she paid at least ten other maintenance fees during that same period of time. It was only due to Ms. Ford's assurances that the fee had been paid that it was removed from Mr. Artz's docket. Also, since the CPI computer docketing system is not configured to indicate a failure to pay a maintenance fee, and only reminds the responsible

attorney of pending due dates, Ms. Ford's inaction with regard to the maintenance fee did not create a follow-up action item. Subsequent docket reports from the computerized system did not contain any reference to the maintenance fee, which also led to the conclusion that it had been paid.

Also, a current investigation of the records of the PTO shows that the PTO did not send any notices of abandonment or expiration, or missed maintenance fee payments, relative to either the '925 patent or its related '216 reissue patent.

Therefore, there was no reason for Mr. Artz or for any other reasonably prudent person under these circumstances, to examine the '216 patent file itself to confirm payment of the second maintenance fee or otherwise question the status of that patent.

The first time the Artz law firm became aware of the missed payment was on January 12, 2007, when it was brought to the attention of Mr. John S. Artz in connection with a lawsuit concerning the '216 reissue of the '925 patent. Immediately, the Artz firm investigated the non-payment.

Ms. Ford's assurance that the maintenance fee was paid for the '216 patent may have merely been an inadvertent mistake, or it may have been a consequence of an illness. The true reason may never be known. Unbeknownst to Mr. Artz, or anyone at the Artz firm, Ms. Ford had been diagnosed with a terminal illness in mid-to-late 2004. Ultimately, her illness led to her hospitalization and death in the summer of 2005. She hid her illness and its effects from everyone, including her husband, her family, and her employer the Artz law firm. Because her illness was unknown, and Ms. Ford did not display any diminished physical or mental capacity while at the firm in 2004, Mr. Artz had no reason to question whether the duties she said she performed prior to her hospitalization were, in fact, carried out. By early 2005, however, she did

not appear to be herself, but only indicated when asked that she was just overwhelmed. She left her employment with the Artz firm in March 2005 and passed away in August 2005. The only information that was passed on to the Artz firm was that Ms. Ford had a "brain infection."

It is interesting to note that the only maintenance fee not paid by Ms. Ford was the last one out of eleven and the due date was October 29, 2004, which was a short time before she left.

Not until the present petition did the Artz firm believe it was necessary to further investigate Ms. Ford's illness. In speaking recently with her widower, Mr. Raphael Ford, the Artz firm learned that Ms. Ford's illness caused her to forget dates and lose lapses of time in her memory. Mr. Ford indicated that Ms. Ford's illness, which she had kept secret during her time at the Artz firm, began to manifest itself to him in mid-to-late 2004.

Thus, despite (1) reliance upon a reliable computer docketing system, (2) a well-established and reliable procedure for processing docketed action items, and (3) assurances from a competent and reliable patent assistant, the second maintenance fee for the '216 patent was not paid. That failure was unavoidable under the appropriate Patent Office standards. Mr. Artz had no reason to doubt Ms. Ford's assurance that the maintenance fee had been paid and the Artz firm's computerized docket system and the PTO did not generate reports or notices indicating otherwise.

Once John S. Artz became aware of this issue, it was immediately investigated. After the matter was investigated and the evidence gathered, this Petition was promptly prepared and submitted.

It is respectfully submitted that the present petition should be granted.

History of Relevant Facts:

- (1) Warrior Lacrosse, Inc. (assignee of the '925 patent and the subsequent '216 reissue patent) retained the Detroit law firm of Barnes, Kisselle, Raisch, Choate, Whittemore & Hulbert ("the Barnes, Kisselle law firm") to file a patent application on the subject matter that became the '925 patent. (See face of '925 patent.) The application was filed on August 18, 1995.
- (2) The '925 patent issued on October 29, 1996.
- (3) Warrior transferred its patent files, including the file for the '925 patent from Barnes Kisselle to Brooks & Kushman, P.C. ("the B & K law firm") in Southfield, Michigan.
- (4) The B & K law firm filed an application for Reissue of the '925 patent on October 19, 1998. (See face of Re 38,216 patent.)
- (5) Warrior transferred responsibility for its files, including the '925 patent and '216 application, to Artz & Artz (formerly Lyon & Artz) during the period from late 1999 and early 2000.
- (6) The first maintenance fee for the '925 patent was paid late after there had been an issue as to which of Warrior's law firms was responsible for paying it.
- (7) The Artz firm entered the '925 patent and the '216 reissue application into its docketing system. The Artz firm used the docketing system developed by Computer Packaging Inc. ("CPI"). The CPI docketing system is well known and utilized by numerous patent law firms and corporate patent departments throughout the U.S.
- (8) The Reissue Patent issued on August 12, 2003. (See face of RE 38,216 patent.)

- (9) Maintenance Fee Reminders relative to payment of the second maintenance fee for the '216 patent were generated by the CPI docketing system at the Artz firm, and the due date appeared in docket reports that were distributed to Mr. Artz and his secretary, Ms. Ford, as part of the Artz firm's docketing practice.
- (10) Mr. Artz and Ms. Ford went over the docket reports that were generated by the CPI system both individually and together in accordance with their (and the Artz firm's) standard practice. During those meetings, decisions were made as to what actions were required on outstanding action items.
- (11) At one of these meetings, Mr. Artz instructed Ms. Ford to pay the second maintenance fee for the '216 patent as was the common practice with respect to patents of Warrior and some other clients.
- (12) Ms. Ford was proficient at filing items with the Patent Office (either manually or electronically), and had made many other maintenance fee payments, including other maintenance fee payments for Warrior patents. In fact, Ms. Ford properly paid ten maintenance fees for Mr. Artz during the 2002-2004 time period in accordance with standard practice and procedures.
- (13) At another meeting, Ms. Ford assured Mr. Artz that the '216 maintenance fee had been paid.
- (14) Mr. Artz therefore believed in accordance with his customary practice that Ms. Ford had paid the second maintenance fee payment for the '216 patent as instructed, and took it off his personal docket.
- (15) After the eight-year date passed (October 29, 2004), the CPI system no longer generated reminders for the second maintenance fee payments.

- (16) Ms. Ford left the Artz law firm in March 2005. A month or two later, the Artz firm became aware that Ms. Ford had a serious illness and was hospitalized. In August 2005, she passed away. The Artz firm was told only that she had a "brain infection."
- (17) The Artz firm first became aware of that the second maintenance fee for the '216 reissue patent had not been paid when a lawyer for another company in the lacrosse industry brought it to Warrior's attention on January 12, 2007.

The Artz Firm's Docketing System and Procedures:

The law firm of Artz & Artz (formerly known as Lyon & Artz, hereinafter "the Artz law firm") was founded in February 1998, by Mr. John A. Artz, Lyman Lyon (now deceased) and John S. Artz. At its inception, the firm purchased the computer docketing system of Computer Packaging, Inc. ("CPI") for all of its patent and trademark docketing needs. The CPI system is a well-known docketing system that is employed by patent firms and companies throughout the country. (CPI's website calls itself the world's largest supplier of patent management systems.) The Artz firm also hired an experienced docket administrator who had worked for many years with the CPI system at other patent law firms in the area. This person ran the docket system effectively for the Artz firm and trained others to run the system as well. CPI provided personnel initially to train the Artz firm employees relative to the system and help enter data from patent files. All of the patent and trademark files of the Artz firm have been entered into the CPI docketing systems on a regular basis over the years. Docket reports are generated from the system on a regular basis by the docket administrator and distributed to each attorney and secretary at the Artz firm.

Each secretary and attorney at the firm has been instructed and trained to keep individual calendars and record the applicable action items and due dates from the docket reports. Each secretary and attorney also meet on a regular basis to review the docket reports. The docket reports reflect all items that are due in the next two months. At those meetings, notes and dates are compared and procedures established by the attorney and his secretary to take care of the outstanding matters and action items.

Once a response of some matter or action item is made in response to the communication, the attorney and secretary would mark their calendars and/or reports accordingly. Also, the secretary would provide a copy of the response or other action to the docketing department so that it could be entered into the system. Thereafter, the item would be removed from future dockets. As to maintenance fees in particular, after the end of the 4, 8 and 12 year periods, the CPI system does not generate any further docket notices or follow-ups even if the fees have not been paid.

Docketing Procedures For Mr. Artz and Ms. Ford:

Mr. Artz and Ms. Ford followed docketing procedures of the Artz firm and took appropriate and prudent steps to make sure no dates or action items were missed. Mr. Artz has used these procedures since he started with the firm in 1998, and continues to use them to this day. In accordance with these procedures, Ms. Ford regularly paid issue fees and maintenance fees for several clients including Warrior.

Once docket reports were provided by the docket administrator, Ms. Ford and Mr. Artz would go through the reports individually, as was the Artz firm policy, and make notes on their copies regarding what actions needed to be taken. They would also meet and go over the docket reports together. As they went through the docket reports, there were certain things that Mr. Artz

would instruct Ms. Ford to do in accordance with their normal procedures, such as paying issue fees, filing statements of use in trademark cases, gathering specimens for statements of use, preparing declarations to comply with Notices of Missing Parts, communicating with clients to obtain information or signatures, paying issue fees, and, of course, paying maintenance fees. Ms. Ford was also instructed to file certain matters electronically where possible, as she was proficient in this area. In this regard, clients of the Artz firm were beta testers of the U.S. Patent Office's electronic filing system when it was first implemented, and so the Artz firm became experienced in electronic filing early on.

This procedure worked effectively for Mr. Artz and Ms. Ford from 2001 until she left in 2005. Prior to Ms. Ford's departure, there was no knowledge of any maintenance fee payments being missed.

Ms. Latitia Ford's Competence and Reliability:

Ms. Ford came to the Artz firm from the University of Detroit High School Administration Department where she had worked in the accounting department for several years. She joined the Artz firm as a member of the accounting or bookkeeping staff and was in charge of billing as well as receivables and collections. She also performed overflow paralegal and secretarial functions. She was a valued employee, had excellent computer skills, a good work ethic, and was reliable. In about 2001, Ms. Ford was promoted to a legal secretary position. She was given further training as a secretary by Mr. Artz and other secretaries at the Artz firm and learned quickly. She worked for Mr. Artz in that position until she left in March 2005.

Ms. Ford's attitude was always good until shortly before she left. She was bright, cheerful, and a quick learner. She was responsible and carried out the duties of a legal secretary for a busy patent attorney on a competent and reliable basis.

RECEIVED
CENTRAL FAX CENTER

JAN 19 2007

The Artz Law Firm's Notice Of The Missed Maintenance Fee Payment:

The Artz firm became aware of the delay in filing the second maintenance fee payment for the '216 patent on Friday, January 12, 2007. An attorney for STX, LLC, a competitor of Warrior Lacrosse brought it to their attention. The Artz firm immediately took steps to investigate the matter because it believed that the payment had been properly and timely made. Upon finding that the maintenance fee had not been paid, the present Petition was prepared.

Applicable Legal Standards:

Pursuant to 35 U.S.C. 41(c)(1):

The Director may accept the payment of any maintenance fee required by subsection (b) of this section . . . after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable.

Decisions on reviving abandoned applications, or reinstating patents, on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting *Ex parte Pratt*, 1887 Dec. Com'r Pat. 31, 32-33 (1887)); see also *Winkler v. Ladd*, 221 F. Supp. 550, 552 (D.D.C. 1963), *aff'd*, 143 USPQ 172 (D.C. Cir. 1963); *Ex parte Henrich*, 1913 Dec. Comm'r Pat. 139, 141 (1913).

Given the facts above and the definition of "unavoidable", the Petitioner respectfully submits that it has made a clear showing that the failure to pay the second maintenance fee for

the '216 patent was unavoidable and therefore has met its burden. Initially, the Artz firm has exercised great care and diligence consistent with how "prudent and careful men [act] in relation to their most important business". The Artz firm has an established and well run docketing system and has taken the due care necessary to insure that all maintenance fees were paid. The Artz firm handled the payment of the second maintenance fee for the '216 patent in the same fashion as it does for other maintenance fees. Further, in accordance with its exercise of care, the Artz firm relied upon a worthy and reliable employee who had not previously given any cause not to be trusted or to not perform her requisite duties in a proper manner. *See, California Medical Product, Inc. v. Tecnol Medical Products, Inc.*, 921 F. Supp. 1219 (D. Del. 1995) (incorrect payment date docketed); *Laerdal Medical Corp. v. Ambu, Inc.*, 87 F.Supp. 255 (D. Md. 1995) (secretary to patent attorney docketed an incorrect maintenance fee due date).

Additionally, Ms. Ford, perhaps through some unforeseen fault or imperfection, failed to make the second maintenance fee payment as she was advised to do and as she assured Mr. Artz had been done. Under similar circumstances, Court's have found situations like this one to meet the "unavoidable" standard. *See, In re Lonardo*, 17 U.S.P.Q.2d 1455 (Commr. Pat. 1990) (intentional concealment of mistake). *See also, Futures Technology, Ltd. v. Quigg*, 684 F.Supp. 430 (E.D. Va. 1988) (plaintiff was given assurances that the work was being done, when in fact it was not being done).

Final Comments

There is no reason that the Artz firm can find for the fact that the second maintenance fee for the '216 reissue patent was not paid. Appropriate docket reports for payment of that maintenance fee were generated by the Artz firm docketing system and the matter was discussed between Mr. Artz and Ms. Ford and she assured him that the fee was paid.

Ms. Ford performed her duties in a responsible and efficient manner and paid every other maintenance fee at that time without errors. A recent check of Mr. Artz's patent cases did not show any other instances where a maintenance fee had not been paid, or appropriate action was not taken by Ms. Ford when instructed by Mr. Artz to do so. Why Ms. Ford did not pay the second maintenance fee relative to the '216 patent is unknown. Perhaps it was the effect of her illness since the payment of the '216 maintenance fee was the last of the eleven maintenance fees that Ms. Ford was responsible for, and the final due date was only a few months before Ms. Ford left due to her illness. On the other hand, the failure to pay the fee might not have been illness-related since this was an isolated act of omission and Ms. Ford did not evidence any symptoms of her illness up to the time she left in 2005. In any event, the maintenance fee was not paid despite the Artz firm taking all reasonable and prudent steps to make sure all docketed items were recorded, noticed and taken care of, and having competent and trained secretaries and attorneys to administer them. The failure to pay the maintenance fee was thus unavoidable and the '216 patent should be reactivated.

There was no reasonable way that the Petitioner, their law firm, or any reasonable attentive and prudent person would have realized that the second maintenance fee for the '216 patent had not been paid. Only through an unavoidable set of circumstances beyond the Petitioner's control was that maintenance fee not paid. No one affiliated with the '216 patent could have learned of its expiration or had reason to question its status, until January 12, 2007.

Conclusion:

The present situation is one where the expiration of the patent was truly unavoidable. Thus, the Petitioner respectfully submits that its Petition to Accept the Late Maintenance Fee be granted.

DECLARATION OF JOHN A. ARTZ

John A. Artz declares as follows:

1. I am a patent attorney having graduated from the University of Michigan with a degree in Aerospace Engineering in 1965 and from the University of Michigan Law School with a J.D. degree in 1968. I spent my first six years with a large patent firm in New York City and the next 24 with two patent law firms in Michigan (Harness, Dickey & Pierce and Brooks & Kushman). I started my own firm in 1998 specializing in patent law and other intellectual property law matters.

2. I am registered to practice before the United States Patent and Trademark Office (Registration No. 25,824) and believe I am very experienced in all areas of patent preparation and prosecution matters.

3. When John S. Artz and I started Artz & Artz (formerly Lyon & Artz with Lyman Lyon who subsequently passed away), we immediately purchased and established a computerized docketing system. We selected Computer Packaging, Inc. ("CPI") with headquarters in Rockville, Maryland, to set up and run our docketing system. I was aware of CPI and their abilities since both of my previous patent firms in Michigan also used their computerized docketing system. (Attached as Exhibit A is a copy of the first few pages from the CPI instruction manual.)

4. We also hired an experienced docketing administrator to input data into the system and run periodic reports (called "docketing reports"). The docket administrator had worked with the CPI docketing system for over 10 years at another patent firm. She

ran our docketing system reliably and efficiently through 2006 when she left. She also helped train other staff personnel who have assumed her duties and responsibilities.

5. The files of all of the clients that came with us were immediately entered into the CPI docketing system. Procedures were also established to input data for new files and new clients. The firm has grown to 10 attorneys today, and we represent hundreds of clients. The data from all of the patent and trademark files for all of our clients have been entered into the CPI system.

6. The CPI system automatically calculates relevant action items and due dates for all of the patent and trademark files. In accordance with our firm policies and procedures, docket reports are printed out by our docketing administrator on a regular basis from the CPI system and provided to each of the attorneys and their secretaries. All of the attorneys and secretaries have been trained to review the docket reports individually, make any notes as appropriate, and then meet together to go over the individual matters on the docket and decide how to take care of each one. Each attorney has the responsibility for certain clients or matters on the docket. I believe that this procedure has been followed by all of the attorneys and secretaries at the Artz firm from 1998 to the present time.

7. Incoming mail is opened on a daily basis and all Patent Office communications are sent to the docketing administrator immediately for entry into the CPI system. If there is a time period for short response, a copy of the PTO communication is provided to the responsible attorney immediately. It is the responsibility of each attorney to review the docket reports relative to the cases and

clients that he or she is responsible for and to make sure that each docket entry is satisfied or taken care of in an appropriate manner. The attorneys also keep there own dockets individually on a calendar or docket report.

8. We have periodic meetings at the Artz firm and discuss any new procedures or standards relative to patent law matters. These include any new PTO rules and regulations relative to preparation, prosecution and maintenance of patent applications and issued patents. Also, copies of all new rules, regulations and procedures are provided to each attorney and their secretary either by email or hard copy.

9. All of our secretaries and staff have been trained in the applicable patent and trademark preparation and prosecution areas, as well as post-issuance maintenance procedures. Ms. Latitia Ford was one of those staff members from 2000-2005. I helped hire Ms. Ford along with the Office Manager. Ms. Ford was bright and capable, as well as reliable and responsible.

10. Ms. Ford started with the Artz firm as a bookkeeper, but as her abilities became apparent, she soon assumed numerous other jobs and duties at the firm. She had good cognitive and computer skills. In 2002, she was promoted to legal secretary and was assigned to work for Mr. John S. Artz. All of us spent time training Ms. Ford, and she turned into an excellent patent legal secretary. She picked it up quickly and seemed to really like what she was doing. She and Mr. Artz worked together as a team and took over responsibility for many clients, including Warrior Lacrosse.

11. In early 2005, Ms. Ford's attitude appeared to change. When asked, she merely indicated that she was "overwhelmed". She left in March 2005. A month or two

later, we heard she was in the hospital and had a "brain infection." None of us at the firm knew she was sick. She hid it from all of us. In August 2005, she passed away. All of us were saddened by her death since she had been a big part of our "family" at the firm for several years. In order to help her two children, we set up a trust fund for them which they are to use for their college education.

12. After we heard that there was a possibility that the second maintenance fee for the '216 reissue patent which succeeded the '925 patent had not been paid, we did not believe it. However, after thoroughly investigating the situation, we have been unable to find any evidence that it had been paid. This was a complete surprise to us since we have not had any other cases or patents lapse due to inadvertent non-payment of requisite maintenance fees throughout our history. In this regard, over the last few days, we have reviewed the CPI system and files that Ms. Ford worked on while she was here (including all Warrior files) and did not find any others where she had not paid a docketed fee or taken steps as requested by Mr. John S. Artz. We also have checked all files of all Artz firm clients and did not find a single error or irregularity relative to maintenance fee payments.

13. As to maintenance fees in particular, our investigation showed that during the 2002-2005 time period, Ms. Ford made ten maintenance fee payments on patent cases (all at the request of Mr. Artz). The only maintenance fee that apparently was not paid was the second maintenance fee for the '216 reissue ('925) patent. After about mid-2003, Ms. Ford made the maintenance fee payments electronically. The electronic transactions

paid the fee from the Artz firm deposit account and did not require signatures on any documents.

14. Of the eleven maintenance fee payments that Ms. Ford was responsible for, the '216 reissue ('925) maintenance fee payment was the last one and was the closest to the time that she left the Artz firm. The eight year date for that maintenance fee payment was on October 29, 2004.

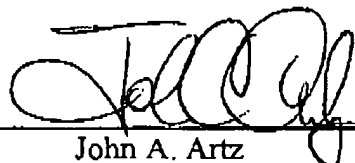
15. As part of our investigation, we also contacted Ms. Ford's husband, Raphael Ford, whom we came to know during the time that Ms. Ford worked here. He advised us that Ms. Ford had been diagnosed with a terminal illness and hid it from him and the rest of her family, including her parents and her two children. He also stated that he had noticed that over the last year or so before her death that she had started to forget dates and appointments, and also lost lapses of time in her memory. He believed that this was caused by her illness.

16. I believe that the Artz firm has an extremely competent and reliable docketing system. It also has an excellent and well run procedure for recording, maintaining and meeting all dates and action items that came up during the practice of patent law and other intellectual property law matters. I believe that we have competent and trained secretaries and staff personnel who are sufficiently reliable and responsible for taking care of all patent and intellectual property matters, either by themselves or by assisting our attorneys. Ms. Ford was one of those staff members.

This Declaration is being signed under penalty of perjury. I hereby declare that all statements made therein of my own knowledge are true and all statements made on

information and belief are believed to be true. Further, all statements made in the above Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001.

Date: January 19 2007


John A. Artz



*Patent
Management
System*
ACCESS 97

**COMPUTER PACKAGES INC.
414 HUNGERFORD DRIVE
SUITE 300
ROCKVILLE, MARYLAND 20850
(301) 424-8890**

AUGUST 1997

EXHIBIT A

COMPUTER PACKAGES INCORPORATED
PATENT MANAGEMENT SYSTEM
FOR WINDOWS

The Computer Packages Patent Management System for Windows is a personal computer based docketing system using the Microsoft Access data base language. The system is designed from the most widely used patent docketing system in the world. The initial system was developed in 1968.

A major function of the system is to provide for the reliable maintenance of deadlines required for the management of patents. Where logically possible, the system will calculate deadlines to reduce both the risk of error and data-entry effort. The user also has the ability to enter unlimited action deadlines. A history of actions is kept in the system.

Reducing the effort required to find a patent, or group of patents, is another important function of the system. The system allows for retrieval on a combination of data fields or string of characters within a data field. The search can be requested on a record by record basis, or a table of all records fitting the search criteria.

The system contains commonly requested reports, including a docket report which can be printed for any date range desired. The system also includes a custom report generator which allows the user to create his own reports.

There are several selections to choose from on the main menu of the system. The Invention Data, Country Application, and Action Due screens are where the majority of data entry and searching will be done. These screens are linked together to preserve the family concept of the patents. For each invention record, you may enter an unlimited number of country applications. The link between these two screens is the case number. Similarly, for each country application record, you may enter an unlimited number of actions. The link between these two screens is case number, country and sub case.

The Patent Management System User's Guide was created to be a quick reference to help users of the system maintain their patent portfolio. The User's Guide is divided into six different sections focusing on data entry, searching, reporting, queries, system administration and form letters.

The **DATA ENTRY** section provides a list of the different types of fields you will encounter within the system, commonly used toolbar buttons, and function buttons. This section also provides instruction on how to move about the system, a description of the fields found on the main data entry forms, instruction on how to enter different types of applications, and how to docket actions.

SEARCHING begins with examples of basic searches and moves on to more advanced searching techniques later in the section.

The **QUERIES** section provides detailed instructions for creating your own queries. As you become more familiar with your system and you begin creating your own reports,

Table of Contents

**COMPUTER PACKAGES INCORPORATED
PATENT MANAGEMENT SYSTEM
FOR WINDOWS**

this will become an excellent reference. Explanations are provided for creating both basic and more advanced queries.

All of the defined reports are described in the **REPORTS** section with an example of each. In the second half of the section are instructions for creating and modifying your own reports. You may save any reports that you create yourself for future use.

SYSTEM ADMINISTRATION provides you with a diagram of how the system is physically set up, how to compact and repair the database, how to set up security and new users in the system, and what the system options should be set to. There is also a description for each of the selections on the Utility Menu.

The **LETTER GENERATION** section illustrates the merging capabilities between Microsoft Word and Microsoft Access.

The Microsoft Access Manual may be used along with Computer Packages User's Guide and will supply more technical support on the operation of the system. References are made to the Access Manual throughout the User's Guide .

DECLARATION OF JOHN S. ARTZ

I, John S. Artz, hereby declare and state as follows:

Background:

1. I am currently a member of the intellectual property law firm of Artz & Artz ("the Artz law firm") and have been since its inception in February 1998.

2. I graduated from the University of Michigan in 1989 with a Bachelor of Science Degree in Mechanical Engineering. I then attended law school at the Detroit College of Law where I graduated in 1992 *cum laude* with a J.D. I am also registered to practice before the Patent and Trademark Office (Reg. No. 36,431).

3. After graduation from law school, I worked in Chicago as a patent attorney at the intellectual property law firm of McAndrews, Held & Malloy. In 1992, my wife and I returned to Michigan where I accepted employment as a patent attorney at the intellectual property law firm of Brooks & Kushman P.C. in Southfield, Michigan. I engaged in patent prosecution at both of these firms and thus utilized their respective docketing procedures and systems to track dates.

Firm Docketing Procedures:

4. When we started the Artz law firm, one of the first things we did was ensure that we had a reliable docketing system. We purchased docketing software from Computer Packages, Inc. ("CPI") and utilized it as our docketing system for both patents and trademarks. This is the same docketing system and software that was utilized by Brooks & Kushman and, to my knowledge, is also utilized by numerous other intellectual property firms.

5. In connection with setting up the docketing system, we also established docketing procedures that were consistent with the procedures I was familiar with from Brooks & Kushman and that John A. Artz was familiar with from his 30-plus years of experience with patent law firms. These procedures have remained substantially unchanged since they were first established and have been dependable, reliable, and trustworthy. To my knowledge, the CPI computer docketing system that we have used has never caused any errors and we have not missed any dates due to the CPI docketing system. Similarly, the procedures that we employed and personnel that we trained to ensure that the appropriate information is docketed and that notices are provided of the action items and due dates, have also been dependable, reliable, and trustworthy.

6. When we started the firm, we hired a docketing administrator to assist in interfacing with the CPI system and to assist in implementing the firm's docketing procedures. The docketing administrator had been working with the CPI docketing system at another intellectual property firm for over ten (10) years before beginning work at the Artz law firm. The docketing administrator also assisted in training other employees on the CPI docketing system.

7. I have reviewed the statement of docketing procedures set forth in the Declaration of John A. Artz, the managing partner of the Artz firm. I personally have followed these procedures and from my experience so have all of the other attorneys at the Artz firm, as well as the secretaries.

Ms. Latitia Ford's Background, Training, And Experience:

8. Ms. Latitia Ford ("Ms. Ford") started working for the Artz firm in 2000 as a bookkeeper in our accounting department. Ms. Ford graduated from Cass Technical High School in Detroit, Michigan, and attended college for two years at Central Michigan University. She worked in the administrative office at the University of Detroit High School before starting with the Artz firm. She left the Artz firm in March 2005 and is now deceased. It was clear from the beginning that Ms. Ford was extremely bright, dedicated, and responsible. Within a couple of months she had a full grasp of the accounting and billing system and, in fact, had decreased by several days the time period from when the firm's pre-bills were first run to when they were mailed.

9. She was promoted in early 2002 to a position as a legal secretary. She was primarily assigned to work for me. When she began working for me, she received extensive training in a variety of areas, including the CPI docketing system and the electronic filing of patent applications. (The Artz firm has two clients that were beta testers of the electronic filing system with the Patent Office.) While she had become familiar with the docketing system and procedures in connection with her other duties, the docketing administrator and other firm secretaries completed the training on these matters. She, together with other secretaries and staff members, also received refreshers and updated training as the need arose. As a result, Ms. Ford became proficient and was well trained in all aspects with respect to the firm's docket and docketing procedures.

My Personal Docketing Procedures:

10. As standard practice in the Artz firm, the docket administrator prepared docket reports on a regular basis and distributed copies to each attorney and secretary. The docket reports listed all upcoming action items and their due dates. Attached as Exhibit A is a copy of recent representative docket report (with confidential information redacted).

11. Once the docket reports were received, Ms. Ford and I would go over them individually and then meet and discuss the entries and any outstanding issues. Since many of the items were merely status inquiries, she would check the files in advance of our meeting and report her findings during our meeting. As to outstanding matters, we would divide the responsibility depending on the task. For example, I would respond to Office Actions and she would see to it that PTO fees were paid. She also would let me know if something had been completed so I could take it off my copy of the docket report.

12. Only when something was completed would I take it off my copy of the docket report. Thus, if I instructed Ms. Ford to perform a task, this instruction would be noted on my personal docket. I would only remove it from my personal docket after she informed me that she had completed a certain action item. After she advised me of the completion of an item, I would remove it (i.e. cross it off) from my personal docket, which would indicate to me that this item was done. When all items on my personal docket were completed, I discarded it in favor of a new personal docket that would be created when a new docket report was reviewed.

13. I attest that Ms. Ford and I followed these procedures at all relevant times. During the time that she worked for me from early 2002 through March 2005, due to utilization of the Artz firm's docketing system and by following these procedures, we did not miss any dates and I believe that everything that was supposed to be done was done and was completed in a timely fashion.

14. My usual procedure regarding the timely payment of maintenance fees is the same as set forth above. Specifically, when a maintenance fee payment item appeared on my docket, Ms. Ford and I would notice the date and to the extent we did not already have instructions to pay the fee, we would seek guidance from the client. To pay the maintenance fee, I instructed Ms. Ford to take the necessary steps to pay it. Since the inception of the firm, by following the firm's procedures and my procedures, I believed (until now) that all maintenance fees were paid that we were authorized to pay.

15. During the period Ms. Ford was my legal secretary, in accordance with the above procedures, I instructed her and she timely paid numerous maintenance fees on different patents. This was an established procedure that we had followed. As confirmation, during the last week (i.e, since January 12, 2007), and assisted by the Artz firm's docketing administrator, I searched the CPI database and the firm's files and have determined that Ms. Ford paid ten other maintenance fees that she had been instructed to pay from 2002 to March 2005. The only one not paid was the second maintenance fee for the '216 reissue patent (which succeeded U.S. 5,568,925). The majority of the maintenance fee payments that Ms. Ford paid related to other patents of Warrior Lacrosse who is the owner of the '216 patent. After mid-2003, the payments were done

electronically and therefore did not require my signature. The results of this investigation confirm that the docketing system and procedures in place were reliable and trustworthy for the purposes of timely paying maintenance fees.

Specifics Relative To The '216 Patent:

16. In accordance with the Artz firm procedures, the '925 patent and subsequent '216 reissue patent were both entered into the CPI docketing system. The second (8 year) maintenance fee was due by October 29, 2004, with the six month grace period. The due date for the second maintenance fee as well as the reminder for the grace period appeared on the Artz docket. (A recreation of the notice from the CPI docketing system is attached as Exhibit B.)

17. The fact that the second maintenance fee for the '216 patent was not paid is a mystery to me. Until one week ago, I always thought it had been paid. The due date for that payment was on the docket reports that were provided by the Artz firm docketing administrator in 2004. Also, I remember specifically discussing this case with Ms. Ford since the '925 patent and its subsequent reissue patent were two of our client Warrior's most significant patents.

18. When I first discussed the '216 second maintenance fee with Ms. Ford, I instructed her to pay it since this was my usual procedure with all Warrior cases. Warrior had given me authorization to pay all maintenance fees and issue fees for all of their patents. At a subsequent time in discussing docket reports and docketing items in which the final due date for payment of the second maintenance fee for the '216 patent was mentioned, Ms. Ford assured me that the maintenance fee had been paid. Since I trusted

her and she had performed all of the other tasks that I had given her in the past, I believed her, and took the matter off of my docket.

19. I had no reason to question Ms. Ford's representation to me regarding payment of the second maintenance fee for the '216 patent. Additionally, given the fact that the other items she had told me were completed, including other maintenance fee payments, I had no reason to question the truth of her representation.

20. After October 29, 2004, no other reminders regarding payment of the second maintenance fee appeared and I had no reason to question Ms. Ford's indication to me that the second maintenance fee payment for the '216 patent had been made. The CPI system does not produce reminders or additional docket entries with respect to maintenance fees after the final 4, 8 and 12 year dates. Also, a current investigation of the PTO records shows that the PTO did not send any notices of abandonment or missed maintenance fees relative to either the '925 patent or its related '216 reissue patent. I have believed since 2004 to last week that the second maintenance fee payment had been made.


Discovery of Error:

21. On January 12, 2007, I was advised by an attorney (James K. Archibald) for a competitor of Warrior's that the '216 reissue patent had lapsed due to failure to pay the second maintenance fee. This was the first knowledge of this we had received. We therefore promptly investigated the facts and prepared the present Petition.

This Declaration is being signed under penalty of perjury. I hereby declare that all statements made therein of my own knowledge are true and all statements made on

information and belief are believed to be true. Further, all statements made in the above Declaration were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001.

Date: January 19, 2007



John S. Artz

Friday, January 19, 2007

Due Date List By Attorney

Page: 1

From 2/1/2007 To 4/1/2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
01-Feb-2007 Reminder	1 Month to Due Date	01-Dec-2006 US-3 Month Office Action	WLI 1171	[REDACTED]	US	[REDACTED]	16-May-2005
	Status: Published	Title: [REDACTED]					
01-Feb-2007 Final	Foreign Filing Due	01-Feb-2006 Foreign Filing	WLI 1350	[REDACTED]	US	[REDACTED]	31-Feb-2006
	Status: Pending	Title: [REDACTED]					
01-Feb-2007 Final	Filing Due	01-Feb-2006 File Application	WLI 1350	[REDACTED]	US	[REDACTED]	01-Feb-2006
	Status: Pending	Title: [REDACTED]					
01-Feb-2007 Due Date	3 Month Due Date	01-Nov-2006 US-3 Month Office Action	WLI 1424	[REDACTED]	US	[REDACTED]	14-Sep-2006
	Status: Pending	Title: [REDACTED]					
01-Feb-2007 Reminder	1 Month to Due Date	01-Dec-2006 US-3 Month Office Action	WOCS 0102	[REDACTED]		[REDACTED]	09-Jan-2003
	Status: Pending	Title: [REDACTED]					

EXHIBIT A

Friday, January 19, 2007

Due Date List By Attorney

Page: 2

From 2/1/2007 To 4/1/2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
03-Feb-2007 Due Date	Application Status Check	03-Aug-2005 Application Status Check	BA 1008	[REDACTED]	US	[REDACTED]	03-Aug-2005
	Status: Published	Title: [REDACTED]					
04-Feb-2007 Reminder	1 Month to Due Date	04-Dec-2006 US-3 Month Office Action	IVI 1016	[REDACTED]	US	[REDACTED]	23-May-2002
	Status: Published	Title: [REDACTED]					
	Remarks: [REDACTED]						
04-Feb-2007 Reminder	3rd rem Ready to file yet?	04-Aug-2006 90 day target for filing	SKL-0101	[REDACTED]	US		
	Status: Unfiled	Title: [REDACTED]					
05-Feb-2007 Reminder	Foreign Filing 9 Mo. Reminder	05-May-2006 Foreign Filing	BA 1007	[REDACTED]	US	[REDACTED]	05-May-2006
	Status: Published	Title: [REDACTED]					
07-Feb-2007 Due Date	Proof/Submit Patent to Client	07-Nov-2006 US-Letters Patent-Ribbon Copy	FGT 1747	[REDACTED]	US	[REDACTED]	30-Dec-2002
	Status: Granted	Title: [REDACTED]					
		Title: [REDACTED]					

Friday, January 19, 2007

Due Date List By Attorney

Page: 3

From 2/1/2007 To 4/1/2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
07-Feb-2007 Reminder	1 wk rem target for filing due Status: Unfiled	16-Nov-2006 90 day target for filing Title: [REDACTED]	MCWW I018	[REDACTED]	US	[REDACTED]	[REDACTED]
08-Feb-2007 Due Date	Due Date - Election	09-Jan-2007 US-Restriction Title: [REDACTED]	BA 1007	[REDACTED]	US	[REDACTED]	05-May-2006
11-Feb-2007 Reminder	Foreign Filing 9 Mo. Reminder Status: Published	11-May-2006 Foreign Filing Title: [REDACTED]	IV1 1041	[REDACTED]	US	[REDACTED]	1-May-2006
12-Feb-2007 Reminder	2 Mth (shortened) Due Date Status: Published Remarks: [REDACTED]	12-Dec-2006 US-Final Office Action Title: [REDACTED]	INL-0111	[REDACTED]	US	[REDACTED]	29-Oct-2003
14-Feb-2007 Final	90 day target filing appln Status: Unfiled	16-Nov-2006 90 day target for filing Title: [REDACTED]	MCWW I018	[REDACTED]	US	[REDACTED]	[REDACTED]

Friday, January 19, 2007

Due Date List By Attorney

Page: 4

From 2/1/2007 To 4/1/2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
14-Feb-2007 Last	Issue Fee Due	14-Nov-2006 US-Allowance	NIKO 0101	[REDACTED]	US	[REDACTED]	03-Jun-2004
	Status: Published	Title: [REDACTED]					
	Remarks: [REDACTED]						
14-Feb-2007 Due Date	Proof/Submit Patent to Client	14-Nov-2006 US-Letters Patent-Ribbon Copy	VSI 0101R	[REDACTED]	US	[REDACTED]	19-Jan-2002
	Status: Granted	Title: [REDACTED]					
14-Feb-2007 Due Date	3 Month Due Date	14-Nov-2006 US-3 Month Office Action	WLI 1165	[REDACTED]	US	[REDACTED]	03-Mar-2005
	Status: Published	Title: [REDACTED]					
15-Feb-2007 Reminder	Fee Due in 1 Month	15-Dec-2006 US-Allowance	WLI 1098	[REDACTED]	US	[REDACTED]	14-May-2003
	Status: Pending	Title: [REDACTED]					
15-Feb-2007 Reminder	Filing Reminder	15-Aug-2006 File Application	WLI 1373	[REDACTED]	US	[REDACTED]	15-Aug-2006
	Status: Pending	Title: [REDACTED]					

Friday, January 19, 2007

Due Date List By Attorney

Page: 5

Attorney: JSA John S. Artz

From 2/1/2007 To 4/1/2007

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
15-Feb-2007 Reminder	Foreign Filing Reminder	15-Aug-2006 Foreign Filing	WLI 1373	A	US	[REDACTED]	15-Aug-2006
	Status: Pending	Title: [REDACTED]					
16-Feb-2007 Reminder	Foreign Filing 9 Mo. Reminder	16-May-2006 Foreign Filing	IVI 1036	[REDACTED]	US	[REDACTED]	16-May-2006
	Status: Published	Title: [REDACTED]					
16-Feb-2007 Reminder	Foreign Filing 9 Mo. Reminder	16-May-2006 Foreign Filing	IVI 1040	[REDACTED]	US	[REDACTED]	16-May-2006
	Status: Published	Title: [REDACTED]					
17-Feb-2007 Due Date	3 Mth Due Date/Not. Of Appeal	17-Nov-2006 US-Final Office Action	BA 1006	[REDACTED]	US	[REDACTED]	14-Jul-2005
	Status: Published	Title: [REDACTED]					
18-Feb-2007 Reminder	Filing Reminder	18-Aug-2006 File Application	WLI 1170	[REDACTED]	US	[REDACTED]	18-Aug-2006
	Status: Pending	Title: [REDACTED]					

Friday, January 19, 2007

Due Date List By Attorney

Page: 6

Attorney: JSA John S. Artz	From 2/1/2007	To 4/1/2007								
Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date			
18-Feb-2007 Reminder	Foreign Filing Reminder	18-Aug-2006	WLI 1170	[REDACTED]	US	[REDACTED]	18-Aug-2006			
	Status: Pending	Foreign Filing Title: [REDACTED]								
18-Feb-2007 Reminder	Filing Reminder	18-Aug-2006	WLI 1225	[REDACTED]	US	[REDACTED]	18-Aug-2006			
	Status: Pending	File Application Title: [REDACTED]								
18-Feb-2007 Reminder	Foreign Filing Reminder	18-Aug-2006	WLI 1225	[REDACTED]	US	[REDACTED]	18-Aug-2006			
	Status: Pending	Foreign Filing Title: [REDACTED]								
18-Feb-2007 Due Date	4th rem Ready to File yet?	18-Jul-2006	WLI 1416	[REDACTED]	US					
	Status: Unfiled	90 day target for filing Title: [REDACTED]								
19-Feb-2007 Reminder	2nd Extension	19-Sep-2006	DLK 0101	[REDACTED]	US	[REDACTED]	27-May-2004			
	Status: Published	US-3 Month Office Action Title: [REDACTED]								
	Remarks:	[REDACTED]								

Friday, January 19, 2007

Due Date List By Attorney

Page: 7

From 2/1/2007 To 4/1/2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date	Case Number	Client	Country	Application Number	Filing Date
10-Feb-2007 Reminder	EP-Exam Report Resp Due 2MI Rem	20-Apr-2007 EP-Examination Report	IVI 1011	[REDACTED]	EP	[REDACTED]	04-Apr-2003
	Status: Published	Title: [REDACTED]					
21-Feb-2007 Due Date	Foreign Filing 11 Mo. Reminder	21-Mar-2006 Foreign Filing	WLI 1212	[REDACTED]	US	[REDACTED]	21-Mar-2006
	Status: Published	Title: [REDACTED]					
22-Feb-2007 Reminder	2nd Extension	22-Sep-2006 US-3 Month Office Action	FUN 0102	[REDACTED]	US	[REDACTED]	17-Jun-2005
	Status: Published	Title: [REDACTED]					
22-Feb-2007 Reminder	Foreign Filing 9 Mo. Reminder	22-May-2006 Foreign Filing	IVI 1042	[REDACTED]	US	[REDACTED]	22-May-2006
	Status: Published	Title: [REDACTED]					
22-Feb-2007 Reminder	Foreign Filing 9 Mo. Reminder	22-May-2006 Foreign Filing	IVI 1043	[REDACTED]	US	[REDACTED]	22-May-2006
	Status: Pending	Title: [REDACTED]					

Friday, January 19, 2007

Due Date List By Attorney

Page: 8

From 2/1/2007 To 4/1/2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
24-Feb-2007 Due Date	4th rem Ready to File yet?	24-Jul-2006 90 day target for filing	MPC 0111		US		
	Status: Unfiled	Title: [REDACTED]					
24-Feb-2007 Reminder	Foreign Filing 9 Mo. Reminder	24-May-2006 Foreign Filing	WLI 1205		US		24-May-2006
	Status: Published	Title: [REDACTED]					
26-Feb-2007 Reminder	1 Month to Due Date	26-Dec-2006 US-3 Month Office Action	WLI 1063		US		18-Aug-2003
	Status: Published	Title: [REDACTED]					
28-Feb-2007 Due Date	3 Mth Due Dv/Not. Or Appeal	29-Nov-2006 US-Final Office Action	BA 1008		US		03-Aug-2005
	Status: Published	Title: [REDACTED]					
28-Feb-2007 Reminder	3rd rem Ready to file yet?	31-Aug-2006 90 day target for filing	BRINE 0126		US		
	Status: Unfiled	Title: [REDACTED]					

Friday, January 19, 2007

Due Date List By Attorney

Page: 9

From 2/1/2007 To 4/1/2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
28-Feb-2007 Reminder	3rd rem Ready to file yet? Status: Unfiled	31-Aug-2006 90 day target for filing Title: [REDACTED]	BRINE 0129	[REDACTED]	US	[REDACTED]	[REDACTED]
28-Feb-2007 Reminder	3rd rem Ready to file yet? Status: Unfiled	31-Aug-2006 90 day target for filing Title: [REDACTED]	BRINE 0130	[REDACTED]	US	[REDACTED]	[REDACTED]
28-Feb-2007 Reminder	3rd rem Ready to file yet? Status: Unfiled	31-Aug-2006 90 day target for filing Title: [REDACTED]	BRINE 0132	[REDACTED]	US	[REDACTED]	[REDACTED]
28-Feb-2007 Reminder	3rd rem Ready to file yet? Status: Unfiled	31-Aug-2006 90 day target for filing Title: [REDACTED]	BRINE 0133	[REDACTED]	US	[REDACTED]	[REDACTED]
28-Feb-2007 Reminder	3rd rem Ready to file yet? Status: Unfiled	31-Aug-2006 90 day target for filing Title: [REDACTED]	BRINE 0134	[REDACTED]	US	[REDACTED]	[REDACTED]

Page: 10

Due Date List By Attorney

From 2/1/2007 To 4/1/2007

Friday, January 19, 2007

Attorney: JSA John S. Artz

Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
28-Feb-2007 Reminder	3rd rem Ready to file yet?	31-Aug-2006 90 day target for filing	BRINE 0135	[REDACTED]	US	[REDACTED]	[REDACTED]
	Status: Unfiled	Title:					
28-Feb-2007 Reminder	3rd rem Ready to file yet?	31-Aug-2006 90 day target for filing	BRINE 0136	[REDACTED]	US	[REDACTED]	[REDACTED]
	Status: Unfiled	Title:					
28-Feb-2007 Reminder	3rd rem Ready to file yet?	31-Aug-2006 90 day target for filing	BRINE 0137	[REDACTED]	US	[REDACTED]	[REDACTED]
	Status: Unfiled	Title:					
28-Feb-2007 Reminder	3rd rem Ready to file yet?	31-Aug-2006 90 day target for filing	BRINE 0138	[REDACTED]	US	[REDACTED]	[REDACTED]
	Status: Unfiled	Title:					
28-Feb-2007 Reminder	3rd rem Ready to file yet?	31-Aug-2006 90 day target for filing	BRINE 0139	[REDACTED]	US	[REDACTED]	[REDACTED]
	Status: Unfiled	Title:					

Page: 1

Due Date List By Attorney

Friday, January 19, 2007

From 4/1/2004 To 6/1/2004

Attorney: JSA John S. Artz


Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
							
29-Apr-2004 Due Date	Tax 7.5	29-Oct-1996 tax 7.5	WLI 1003	WLI Warrior Lacrosse, Inc.	US	08/516791	18-Aug-1995
	Status: Granted			Title: Scooped Lacrosse Head			
29-Apr-2004 Due Date	Tax 7.5	29-Oct-1996 Tax 7.5	WLI 1004	WLI Warrior Lacrosse, Inc.	US	09/174804	19-Oct-1998
	Status: Granted			Title: Scooped Lacrosse Head			

EXHIBIT B

Friday, January 19, 2007		Due Date List By Attorney				Page: 1	
Attorney:		From 6/1/2004	To 8/1/2004				
Due Date/ Date Type	Reason for Date	Action Base Date/	Case Number	Client	Country	Application Number	Filing Date
Status:							

Page: 1

Due Date List By Date

Monday, January 15, 2007

From 10/30/2004 To 12/31/2004

Due date/ Date Type	Reason for Date	Action Base Date/ Action Type	Case Number	Client	Country	Attorney(s)	Application Number	Filing Date
[REDACTED]								